NSBD d/b/a Fairlane Town Center *and* Scott A. Nalepa. Case 7–CA–36687

April 30, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS COHEN AND FOX

On January 23, 1996, Administrative Law Judge Arline Pacht issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions, and to adopt the recommended Order as modified.[2]

ORDER

The National Labor Relations Board orders that the Respondent, NSBD d/b/a Fairlane Town Center, Dearborn, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

Insert the following as paragraph 2(b) of the Order, relettering the remaining paragraphs accordingly.

''(b) Remove from its files all reference to the unlawful refusal to grant Scott Nalepa's request to transfer to part-time employment as a security guard, and notify him that this action has been taken and will not be used against him in the future.''

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The Respondent's exceptions assert that the judge's decision evidences bias and prejudice. On our full consideration of the entire record in this proceeding, we find no evidence that the judge prejudged the case, made prejudicial rulings, or demonstrated bias against the Respondent in her analysis and discussion of the evidence.

In adopting the judge's attribution of knowledge of Nalepa's union sympathies to Security Chief Scott, we do not rely on her comments pertaining to Scott's investigatory competence.

[2] We shall modify the Order by inserting the expunction language that the judge has included in the notice but has inadvertently omitted from the recommended Order.

Gary Saltzgiver, Esq., for the General Counsel.
James B. Perry and *Michael R. Blum, Esqs. (Abbott, Nicholson Quilter, Esshaki & Youngblood)*, of Detroit, Michigan, for the Respondent.

DECISION

I. STATEMENT OF THE CASE

ARLINE PACHT, Administrative Law Judge. Upon a charge filed in the above-captioned case on December 20, 1994, by Scott A. Nalepa (Nalepa) against NSBD d/b/a Fairlane Town Center (Fairlane or Respondent), a complaint issued on February 16, 1995, alleging that Respondent violated Section 8(a)(1) and (3) of the National Labor Relations Act (the Act) by denying Nalepa's request to work part-time and terminating him because of his union activity.[1] The Respondent filed a timely answer denying the allegation.

This matter came to trial before me on June 1–2, 1995, in Detroit, Michigan, with all parties having an opportunity to examine and cross-examine witnesses, introduce documentary evidence, and argue orally.[2] Upon the evidence presented in this proceeding, my observation of the witnesses' demeanor, and consideration of the parties' posttrial briefs, I reach the following

II. FINDINGS OF FACT

A. *Jurisdiction*

Respondent, a Michigan corporation, with an office and place of business in Dearborn, Michigan, has been engaged in the management and operation of a shopping center. Accordingly, the Respondent alleges and I find that Fairlane is an employer within the meaning of Section 2(2), (5), and (6) of the Act.

The Union is a labor organization within the meaning of Section 2(5) of the Act.

B. *Alleged Unfair Labor Practices*

1. Introduction

The Fairlane Shopping Center, one of the largest enclosed malls in Michigan, employed a security force of approxi-

[1] At the proceeding, the General Counsel moved to amend the complaint to add the following alleged violations of Sec. 8(a)(1):

> 10(a) On or about 6/8/94, the Er [Employer], by its agent Dave Tucker, interrogated ees [employees] about their union activities.
>
> (b) On or about 6/8/94, the Er [Employer] by its agent Dave Tucker, impliedly threatened ees [employees] with loss of jobs because of their union activities.

I denied the motion, on the grounds that a few days before the instant trial, the General Counsel advised counsel for the Respondent that he had no present intention of amending the complaint. However, I pointed out that evidence bearing on the allegation could be introduced as proof of antiunion animus.

[2] Exhibits introduced into evidence by the General Counsel and the Respondent will be cited as GCX and RX respectively, followed by the relevant document number. Language quoted from the transcript will be referred to as Tr. followed by the appropriate page number.

mately 24 to 28 officers, 7 of whom were parttime, and 1 who was on call, at the time of the events giving rise to this proceeding. Charging Party Scott Nalepa (Nalepa) joined Respondent's security staff on a part-time basis, informing some of Respondent's staff that he also worked as a private investigator. In 1991, he became a full-time security guard while continuing to work as a private investigator. He remained in this status until June 28, 1994, when he either was discharged, as the General Counsel claims, or resigned, as the Respondent alleges.[3]

2. Nalepa initiates a union organizing drive

In late February or early March, Nalepa contacted Robert Wines, a business agent of the Police Officers Association of Michigan (POAM), to request guidance in organizing a union of security guards at Fairlane. Wines gave him authorization cards which Nalepa distributed to his fellow employees during his nonworking time. By April, Nalepa had gathered enough signed cards to establish the requisite showing of interest. Thereafter, on May 16, a petition for election was filed with the Michigan Employment Relations Commission.

3. Evidence bearing on Respondent's knowledge

Nalepa testified that he attempted to keep a low profile while engaging in organizational activities. In fact, he was not as cautious as he thought, for occasionally, he spoke about his efforts on behalf of the Union in a quite unguarded manner. For example, sometime in April, Nalepa told a supervisor, Lieutenant Tom Favazza, that he was considering organizing a union. Favazza replied noncommittally, that Nalepa ''should do what you have to do.'' (Tr. 25.)

In May, Nalepa told another supervisor, Sergeant Pat Vallely, that he had been dealing directly with the Union. Vallely confirmed that Nalepa had been less than restrained in discussing the Union, and had spoken openly about POAM in the presence of other supervisors. I found Vallely to be a trustworthy witness, whose candor was remarkable considering that he was a supervisor and that Scott was responsible for his promotion to this post.

Nalepa again drew attention to his involvement in union activities during a June farewell party for Respondent's departing marketing director, Linda MacIntosh. At the party's conclusion, with guests gathered around her, including Operations Manager Aj Jemison, Fenley, and Facilities Manager Will Tamminga, MacIntosh opened gifts and read greeting cards aloud. Among the cards was one containing the following inscription: ''this card is from Scott Nalepa and all the security officers at Fairlane'' signed, ''The Fairlane Security Officers Association.'' (Tr. 27–28.)

Contrary to Nalepa's assumption that he was discrete, his efforts were not unnoticed. In fact, former Sergeant Vallely asserted that the identity of the person who was most involved in the union drive was a matter of ''common knowledge.'' (Tr. 208.) Thus, denials by Security Director Harold Scott, General Manager Michael Fenley, and Vice President of Employee Relations Robert Cleary, that they knew Nalepa was spearheading the union organizing campaign are surprising and, in fact, incredible. Surely, Scott's professional training equipped him with the investigatory skills needed to pinpoint responsibility for undesirable conduct.

4. Evidence bearing on antiunion animus

Nalepa testified that on or about June 8 Assistant Security Director Dave Tucker, while seated at a picnic table outside the security guards' office with another supervisor, Lieutenant Andrayko, asked whether he was the one starting all the ''union sh__t''; that if he was, Respondent would fire everyone and hire contract security. (Tr. 31.) Nalepa stated that he told Tucker if that happened the guards would file charges and regain their jobs with full backpay.

Brian Headen, a former security guard, corroborated Nalepa's account of this exchange asserting that he had appeared on the scene in time to hear Tucker question Nalepa and warn him that if the Union prevailed the security guards would lose their jobs and be replaced. Headen added that Nalepa also said something about his role in bringing the Union in to represent the guards. Respondent attacked Headen's credibility by establishing that he had been terminated for misconduct and was a friend with the Charging Party.

Tucker admitted that he occasionally sat at a picnic table outside the facility with Lieutenant Andrayko. He further acknowledged knowing that Nalepa was prounion, but did not know the nature of the activities in which Nalepa was engaged. Moreover, he denied making the hostile statement both Nalepa and Headen attributed to him.

Nalepa's and Headen's testimony regarding this matter leaves much to be desired. Most damaging is the omission of any reference to Tucker's alleged remark in the affidavit which Nalepa gave to a Board agent in early January 1995. Apparently, Nalepa did not bring this incident to the General Counsel's attention until shortly before the instant hearing. In attempting to explain this oversight, Nalepa stated that he did mention this exchange to the Board agent who waved it off as if he thought the incident was unimportant.

I find it highly unlikely that a Board agent would fail to recognize the significance of such an exchange. It is equally unlikely that Nalepa would sign an affidavit which concluded with the statement that the Respondent had made no other remarks pertaining to the Union if the Tucker incident occurred as he alleged. Headen did little to enhance Nalepa's credibility—he conceded that he and the Charging Party had ''a pretty good rapport,'' and that Respondent had compelled him to resign after discovering he had engaged in misconduct. In light of these circumstances, I conclude that Nalepa concocted this story, and related it to the General Counsel's benefit shortly before the instant trial in order to enhance his case.[4]

5. Nalepa's termination

a. *The General Counsel's case*

On June 20, Nalepa informed the security director, Harold Scott, that he had been offered a desirable full-time position with the State of Michigan, and asked to transfer to a part-time assignment with Fairlane. According to Nalepa, Scott told him he saw no problem with this. However, he asked

[3] Unless otherwise noted, all events took place in 1994.

[4] This incident formed the basis of the General Counsel's motion to amend the complaint at the outset of the hearing.

Nalepa to put his request into writing because he would have to discuss the matter with his superiors, Fenley and Jemison.

Later that day, Nalepa submitted a memo seeking part-time employment as of July 4. When Nalepa repeated his request several days later, Scott purportedly assured him there would be no problem and that he probably would work Fridays through Sundays.

Nalepa further stated that when the next assignment schedule dated June 26 was posted he noted that his assignments ceased on July 3. On learning that Security Director Scott was responsible for the scheduling, he made an appointment to discuss the matter with him on June 28.

On the appointed day, Nalepa met with both Scott and Fenley, with the latter doing all the talking. Fenley advised Nalepa that he had considered the situation with other members of management who were concerned that, if contract negotiations with the Union were required, they might impact part-time work. Accordingly, they concluded that it would be in the Respondent's best interests to refrain from changing any employees' status, other than filling the vacancy which would be created by his departure.

Fenley concluded the meeting by telling Nalepa that his acceptance of a new full-time position would be regarded as a resignation which would take effect immediately. He then offered him a paycheck which included accrued vacation and severance pay. However, Nalepa insisted he was not resigning and refused to accept the check.

Several months later, Cleary contacted Nalepa to arrange a meeting. When they met on October 7, Cleary tried to assure Nalepa that his union activity had nothing to do with the denial of part-time employment and offered him a full-time position. Nalepa rejected the offer, but testified that Cleary also promised that he would fight for his return to a part-time job. Cleary denied making such a pledge.[5]

b. *Respondent's version*

Scott denied assuring Nalepa that he had no problem with his transferring to part-time work. Instead, he alleged telling Nalepa that the transfer might pose a scheduling problem and promised to give him an answer subsequently. Scott further explained at trial that he was opposed to retaining an employee on a part-time basis who was leaving for a full-time position elsewhere, because the individual's primary commitment would be to the full-time post. This, he claimed, would lead to scheduling problems and a greater incidence of overtime which drew higher hourly wage rates.

Scott related that after receiving Nalepa's written request, he told General Manager Fenley that he was opposed to granting part-time status to Nalepa. Fenley agreed with him, but suggested that in light of the Union's May 16 election petition, they should seek legal advice from Cleary, a lawyer and Respondent's vice president for employee relations. A few days later, the three men spoke with by telephone. Cleary endorsed Scott's view that part-time employees with full-time positions elsewhere harbored divided loyalties, but left the final decision in the security chief's hands.

In describing his final interview with the Charging Party, Fenley stated that he first confirmed that Nalepa had accepted a full-time position with the State's Department of Public Health, and then asked him if he could work full time at Fairlane. When Nalepa replied that he could not manage two full-time jobs, Fenley told him that because Respondent was seeking commitment from its employees his request for part-time employment could not be honored and his acceptance of employment elsewhere would be regarded as a resignation.

At no point in his account, did Fenley state that he had referred to the Union during the meeting with Nalepa. Scott, on the other hand, confirmed Nalepa's testimony that Fenley did allude to the effect that union negotiations might have on scheduling part-time employees.

III. DISCUSSION AND CONCLUDING FINDINGS

Principles Governing the General Counsel's Burden of Proof

In *Wright Line*, 251 NLRB 1083, 1089 (1980),[6] the Board announced a causation test for alleged 8(a)(3) violations. Under this test, the General Counsel bears the initial burden of making a prima facie showing sufficient to support the inference that protected activity was a ''motivating factor'' in the employer's decision.[7] To establish a prima facie case, the Government must adduce proof of the following elements: that the employee engaged in protected activity,[8] that the employer knew of this activity,[9] and acted adversely to the employee out of antiunion animus.[10] In other words, proof of these elements must support the inference that the employee's protected conduct was a motivating factor in the employer's decision to adversely alter his or her terms of employment. On applying these standards to the evidence in this case, I conclude that the General Counsel has met his burden.

Nalepa clearly was engaged in union activity; indeed, he was the sole activist on Respondent's staff. He alone was responsible for initially contacting the Union and taking the steps which led ultimately to the conduct of an election.

Based on Sergeant Vallely's convincing testimony that Nalepa's union activism was a matter of common knowledge, I have not the slightest doubt that Respondent's officials knew that Nalepa was responsible for the union organizing campaign.

[5] Respondent contends that Cleary offered Nalepa a full-time position during a telephone conversation in late September, while Nalepa maintains that the offer came during a meeting with Cleary on October 7, the day of the election.

[6] Enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

[7] Id. at 1089; *Teamsters Local 357 v. NLRB*, 365 U.S. 667, 675 (1961) (''[i]t is the 'true purpose' or 'real motive' in hiring or firing that constitutes the test'').

[8] *Wright Line*, supra at 1089; see *F & E Erection Co*., 292 NLRB 587, 592 (1989) (finding that the General Counsel proved its prima facie case including existence of protected activity).

[9] See *Goldtex, Inc. v. NLRB*, 14 F.3d 1008, 1011 (4th Cir. 1994) (quoting *Mack's Supermarkets, Inc*., 288 NLRB 1082, 1101 (1988)) (''company knowledge of union activities is the 'threshold question'. . . because it is a 'fundamental prerequisite' in establishing a discriminatory motivation''); *Active Transportation*, 296 NLRB 431, 432 (1989) (discussing key elements of prima facie case), enfd. 924 F.2d 1057 (6th Cir. 1991).

[10] See *NLRB v. DBM, Inc*., 987 F.2d 540, 543 (8th Cir. 1991) (enforcing Board order because proof of union animus was sufficiently established).

Moreover, Nalepa gave himself away as a union proponent on several occasions in the presence of supervisors. Tucker acknowledged knowing only that Nalepa was ''pro-union.'' Given that admission, it is impossible to believe that he did not know what actions Nalepa took to warrant the prounion label.

Because knowledge of Nalepa's union leanings was widespread, I find Scott's and Fenley's claims that they were unaware of his activities on POAM's behalf incredible.[11] Scott, the chief of the security force, was professionally trained to uncover the identity of persons responsible for various misdeeds at the shopping center. If he was oblivious to the presence of a union proponent on his staff, one wonders how incisive he was in performing his other investigatory duties. The stout denials by these officials that they knew of Nalepa's union activity, which are contrary to the credited evidence, raises serious doubts as to their credibility on other matters as well.[12]

Respondent's decision to invoke a new, unwritten, and unannounced policy and apply it for the first time to the sole union protagonist soon after an election petition was filed cannot be attributed to sheer coincidence. The summary manner in which Nalepa was removed from the scene also gives rise to doubts as to the legitimacy of his discharge. Nalepa had asked to be transferred to part-time status as of July 4. Yet, without explanation, Respondent abruptly ended his employment on June 28, when Fenley handed him a paycheck with his accrued vacation and severance pay already factored into it. Respondent gave no reason for this haste in removing Nalepa from the scene, suggesting that the real reason was one which management preferred to conceal.

Based on the foregoing factors, I found that the General Counsel had established a prima facie case that Nalepa was terminated for unlawful reasons. Accordingly, under *Wright Line*, supra, the burden shifted to Respondent to prove that its reasons for rejecting Nalepa's request for part-time employment were legitimate; that it would have acted in the identical manner even in the absence of the Charging Party's union activity. To this end, Respondent's claimed that they insisted on Nalepa's resignation on finding that scheduling difficulties arose when employees converted to part-time employment in order to accept full-time positions elsewhere.[13] For a number of reasons discussed below, I find Respondent's alleged business justification unconvincing.

Respondent's chief of security, Scott, took the lead in making the case for his employer. He claimed that he never had approved of the practice of permitting an employee to convert to part-time status on accepting a full-time position with another employer, because this meant that the employee's primary loyalties would no longer be with Fairlane. He further claimed that such a shift in loyalties led to scheduling difficulties, and excessive overtime which was costly to the Employer. However, at the time that Scott first was hired as security chief in November 1993, he was well aware that Respondent maintained a retinue of part-time employees for years. Yet, he chose to do nothing about this situation in word or deed, either prior to or following Nalepa's termination. If part-time workers with full-time positions elsewhere posed a problem for the efficiency of Respondent's operations, as it claimed, then one wonders why Scott took no other steps to discourage the continued employment of part-time workers who presumably worked full time for other employers. The Company did not announce a change of policy in this area either orally or in writing. Except for Nalepa, none of the other part-time employees already on the staff was dismissed or given notice that Respondent had any problem with their part-time status.

Although Scott testified without dispute that he rejected three apparently well-qualified candidates for part-time positions because they held full-time jobs elsewhere, he retained all previously hired part-timers who were employed full time by other employers. Moreover, since Nalepa's discharge, Scott has hired six new part-time guards, some as recently as 2 weeks before the instant proceeding. Scott asserted that none of the newly hired part-time employees held other full-time positions. However, there is no guarantee that persons working on a part-time basis who hold no other job, will not harbor other loyalties or cause scheduling difficulties. Indeed, Sergeant Vallely testified that Respondent ''always'' had scheduling problems, in part because of the nature of police work which invariably involves fortuitous circumstances such as court appearances. I understood the Sergeant to mean that both full-time and part-time employees were responsible for scheduling problems and that such problems were not resolved following Nalepa's departure. Additionally, Scott acknowledged that Respondent maintains a rotation list of part-time and full-time employees; if an officer is occasionally unavailable, the next person on the list is called. Respondent made no attempt to claim that the rotation lists were no longer in use.

Further, Vallely pointed out that Scott made great efforts to trim the amount of overtime hours worked. However, only full-time security guards were entitled to overtime pay; part-time employees were paid straight-time wages. Consequently, to reduce overtime, Respondent's economic advantage to maintain a cadre of part-time guards. Therefore, if Scott was intent on reducing overtime hours, he would have to rely on part-time employees. It is ironic that part-time guards were most needed on evening and weekend shifts, the very times that Nalepa was available.

The situation of one of Respondent's security guards, Scott Kulinski, reflects Respondent's lack of concern with part-time employees who held full-time positions elsewhere. Kulinski was recruited for a position with Respondent in December 1993, and worked 14 to 30 hours a week. At the same time, he maintained a stressful, full-time sales position at a uniform supply store where, typically, he put in a 43-hour week. Contrary to Respondent's alleged notion of efficient employment practices, Kulinski remained on Fairlane's

[11] Respondent's vice president, Cleary, also denied knowing of Nalepa's dominant role in the union campaign. Because he did not have the same frequent contact with the members of the security force as did Scott and Fenley, I cannot conclude with conviction that he, too, knew of Nalepa's union activity. However, I find it curious that an executive with responsibility for employee relations in a substantial enterprise would fail to determine the identity of the key union organizer. It also is interesting to note that Nalepa's assertion that Cleary greeted him on October 7 with a wry comment about the union election was not contradicted.

[12] I also found that Nalepa fabricated a portion of his testimony. However, in finding that he was subject to discrimination, I did not rely on the parts of his testimony which were in dispute.

[13] None of Respondent's witnesses ever explained the precise nature of the scheduling difficulties which allegedly were caused by part-time guards.

payroll as a part-time guard at the time of the instant proceeding.

Another security guard, Todd Seipenko, transferred from full to part-time status in September 1993 to accept a position with a community police force. Finding it too demanding to continue working both jobs, Seipenko voluntarily quit his job with Respondent in August 1994. Respondent's managers knew about the demands on Seipenko's time. They also were aware that he had rejected some of the part-time work opportunities offered to him. He hardly fit Scott's need for employees who were ''flexible and were committed to Fairlane Town Center.'' (Tr. 256.) Nevertheless, Respondent made no effort to alter his employment.

Nalepa had never posed an attendance problem for Respondent. He was experienced, lived near the Shopping Center, and was available on the very occasions when Scott said that Respondent most needed part-timers. In light of all of the above circumstances, I conclude that Respondent simply took advantage of the opportunity that Nalepa presented. Not until management was presented with this opportunity to rid itself of the sole union organizer on the security guard staff did Respondent create the defense presented in this case and suddenly raise its alleged concerns about loyalty and scheduling conflicts. Based on all the foregoing considerations, I conclude that Respondent has failed to establish that it would have terminated Nalepa were it not for his critical role in the Union's organizing campaign. Had he not engaged in that activity, it is more likely than not that he still would be working as a part-time security guard for Fairlane.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7), and the Union is a labor organization within the meaning of Section 2(5) of the Act.

2. By refusing to honor Scott Nalepa's request to convert him from full-time to part-time employment, and treating his refusal to continue working full time as a voluntary quit, Respondent violated Section 8(a)(1) and (3) of the Act.

3. The above unfair labor practices affect commerce within the meaning of Section 2(2), (6), and (7) of the Act.

THE REMEDY

Having found that Respondent violated Section 8(a)(1) and (3) of the Act by refusing to retain Scott Nalepa as a part-time security guard, I shall recommend that the Company cease and desist from engaging in discriminatory practices and take appropriate action designed to effectuate the purposes of the Act.

Specifically, I shall recommend that Respondent be required to offer immediate employment to Nalepa as a part-time security guard and make him whole for any earnings lost by reason of the discriminatory action taken against him.

Backpay due under the terms of this Order shall be computed on a quarterly basis as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and shall be reduced by net interim earnings with interest computed as detailed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[14]

ORDER

The Respondent, NSBD d/b/a Fairlane Town Center, Dearborn, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to grant employees' requests for part-time employment, and discharging them because they have engaged in union activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Scott Nalepa full and immediate reinstatement to the part-time position for which he applied and would have been employed but for Respondent's unlawful discrimination against him, without prejudice to any seniority or other rights and privileges he would have acquired, and make him whole, with interest, where appropriate, for any loss of earnings and/or benefits suffered as a result of that discrimination, in accordance with the remedy section of this decision.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its office and at all worksites copies of the attached notice marked ''Appendix.''[15] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notice is not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 21 days from the date of this Order what steps Respondent has taken to comply.

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[14] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[15] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT discharge or otherwise discriminate against our employees for supporting or engaging in activities on behalf of the Police Officers Association of Michigan or any other labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Scott Nalepa immediate and full employment to a part-time position for which he is qualified, or its substantial equivalent, in which he would have been employed were it not for Respondent unlawfully discriminating against him, without prejudice to any seniority or other rights and privileges he would have acquired, and WE WILL make him whole, with interest as appropriate, for any loss of earnings and benefits he may have suffered as a result of our discriminatory treatment.

WE WILL remove from our files, delete, and remove all reference to our unlawful refusal to grant Scott Nalepa's request to transfer to part-time employment as a security guard, and shall notify him that this action has been taken and will not be used against him in the future.

NSBD D/B/A FAIRLANE TOWN CENTER